

MARK A. LITMAN & ASSOCIATES, P.A.

**United States Patent Application**  
**COMBINED DECLARATION AND POWER OF ATTORNEY**

As a below named inventors We hereby declare that: our residence, post office address and citizenship are as stated below next to our name; that

We verily believe We are the original, joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled: **BIOCATALYSTS AND METHOD THEREFOR**. The specification of which is attached hereto.

We hereby state that We have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

We acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, ' 1.56 (see page 3 attached hereto).

We hereby claim foreign priority benefits under Title 35, United States Code, ' 119/365 of any foreign application(s) for patent of inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:  
**No such applications have been filed.**

We hereby claim the benefit under 35 U.S.C. ' 119(e) of any United States provisional application(s) listed below.  
**No such applications have been filed.**

We hereby claim the benefit under Title 35, United States Code, ' 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, ' 112, We acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, ' 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.  
**No such applications have been filed.**

We hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Litman, Mark A.

Reg. No. 26,390

10082661.022002

We hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which We hereby declare that We have consented after full disclosure to be represented unless/until We instruct Mark A. Litman to the contrary.  
Please direct all correspondence in this case to Mark A. Litman & Associates, P.A. at the address indicated below:

3209 West 76th St.  
York Business Center, Suite 205  
Edina, MN 55435  
Telephone No. (952)832.9090

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1: Kerry Kulowski  
Citizenship: U.S.A.  
Residence: 1326 Coach Road, Apartment 132  
Post Office Address: St. Paul, Minnesota 55108

Signature: Kerry Kulowski Date: 18 II '02

Full Name of joint inventor number 2: Paul J. Sheldon  
Citizenship: U.S.A.  
Residence: 771 Armstrong Avenue  
Post Office Address: St. Paul, Minnesota 55102

Signature: Paul J. Sheldon Date: 2/18/02

10082651.022002

' 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by ' 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

200220 "T92300T

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Kerry Kulowski, t al.

Serial No. New Application

Filed: February 20, 2002

Docket No.

1221.001US1

Title: BIOCATALYSTS AND METHOD THEREFOR

Box **PATENT APPLICATION**

PO Box 2327

Arlington, VA 22202

**Communication Re: Small Entity Status**

Dear Sir or Madam:

I, Mark A. Litman, as the attorney of record for the above-mentioned patent application, upon best information and belief hereby state that Acera Biosciences, Inc. is a small entity in accordance with the statute 37 C.F.R. 1.9(f) and 1.27(c).

**MARK A. LITMAN & ASSOCIATES, P.A.**

York Business Center, Suite 205, 3209 W. 76<sup>th</sup> St.  
Edina, MN 55402 (952-832-9090)

By: 

Atty: Mark A. Litman  
Reg. No. 26,390

**CERTIFICATE UNDER 37 C.F.R. 1.10:**

'Express Mail' mailing number: EL842123736US

Date of Deposit: February 20, 2002

The undersigned hereby certifies that this Transmittal Letter and the paper or fee, as described herein, are being deposited with the United States Postal Service 'Express Mail Post Office To Addressee' service under 37 CFR 1.10 and is addressed to: Box Application, PO Box 2327, Arlington, VA 22202

By: 

MARK A. LITMAN